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## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5 - 490
<b>Regulation title</b>	Regulations Governing Grade "A" Milk
<b>Action title</b>	Amend
<b>Document preparation date</b>	May 20, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposed regulation adopts the provisions of the 2009 revision of the Pasteurized Milk Ordinance (PMO). The PMO is a federal model regulation for states to adopt to govern the production, processing, distribution and sale of grade "A" milk and milk products. The requirements in the PMO are established under a cooperative state and federal program operated in cooperation with the National Conference on Interstate Milk Shipment (NCIMS). NCIMS is composed of dairy industry representatives, state milk regulatory personnel, federal representatives from the Food and Drug Administration and academia. The NCIMS holds a conference every two years for the purpose of considering changes to the requirements of the PMO. The PMO establishes minimum standards for individual dairy farms, dairy plant processors and state regulatory programs to comply with Interstate Milk Shipment (IMS) ratings. Milk from grade "A" farm supplies and dairy processors must achieve acceptable rating scores on IMS ratings in order to be shipped in interstate commerce. IMS ratings provide the mechanism for the orderly marketing of milk and milk products in the United States. Compliance with IMS rating requirements is essential to maintain the ability of Virginia dairy farms and plants to market their products outside of Virginia.

### Description

The existing regulation establishes: (1) the requirements to produce and sell Grade “A” milk for pasteurization; the requirements to process and sell fluid milk products (milk, yogurt, and cottage cheese); (2) that milk used for Grade “A” purposes be pasteurized; (3) the requirement for a permit to produce or process Grade “A” milk; and (4) minimum standards that dairy farms and dairy plants must meet in producing and processing Grade “A” milk, including pasteurization, cooling, storage, quality-control tests, packaging, and labeling requirements.

### Statutory Authority and Exemption from Administrative Process Act

The Board of Agriculture and Consumer Services is authorized by § 3.2-5206 of the Code of Virginia (1950), as amended to establish definitions, standards of quality and identity and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling and sanitary standards for milk, milk products and those products manufactured or sold in semblance to or as substitutes therefor. Any regulation adopted pursuant to § 3.2-5206 shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation pursuant to § 3.2-5206. Prior to promulgating any regulation pursuant to § 3.2-5206, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations. The notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least ninety days in advance of the last date prescribed in the notice for submittals of public comment. The legislative review provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under section § 3.2-5206. The Board shall consider and keep on file all public comments received for any regulation adopted pursuant to § 3.2-5206.

### Changes from Existing Regulation

The most important change concerns the definition of “grade “A” milk product” because this definition determines which milk products will fall under the grade “A” regulation. For the first time the definition establishes a clear line between those milk products that will be regulated as grade “A” and those that will not. The new definition establishes that grade “A” milk products must be composed of at least 65% by weight milk and milk products and contain at least 2% milk protein. This definition will cause some cultured milk products currently produced in non-grade “A” plants in Virginia and other states to fall under the grade “A” regulations once they are adopted. The proposed regulation includes an exemption for Virginia processors currently making these cultured milk products to continue to do so after the regulation goes into effect. The exemption will allow these Virginia processors to market their cultured milk products in Virginia, but the cultured milk products will still be considered in violation if found in interstate channels.

Numerous changes were made to definitions under the proposed regulation including:

- (1) The definition of “dairy farm” was changed to clarify that only milk or milk products offered for sale for human consumption are included;
- (2) The definition for “evaporated milk” was deleted;
- (3) References to the 2005 PMO were changed to the 2009 PMO under definitions for “grade A condensed and dry whey”, “grade A condensed milk”, “grade A dry milk product”, and “grade A dry milk and whey product”;
- (4) A definition for “lowfat dry milk” was added;
- (5) The definition of “milk product” was amended to reference § 2 VAC5-490-15; and
- (6) The definition of “pasteurization” was amended to be consistent with the definition of “pasteurization” in the PMO.

The following changes and new requirements are included in the proposed regulation:

§ 2 VAC5-490-15 defines which milk and milk products are included under the grade A regulation;

§ 2 VAC5-490-30.1 establishes an exemption allowing restaurants to make and serve yogurt in their facility;

§ 2VAC5-490-32 was amended to clarify the regulatory authority to impound milk and milk products found in violation of the regulation;

§ 2VAC5-490-35 was amended to reference the 2007 version of the “Evaluation of Milk Laboratories”;

§ 2VAC5-490-36 was amended to reference the most recent revision of M-I-96-10 (Revision #7) dated January 4, 2010;

§ 2VAC5-490-37 was amended to reference the 2007 version of the “Evaluation of Milk Laboratories” and language referencing the initial compliance date for industry labs under the regulation was stricken;

§ 2VAC5-490-40 was amended to include labeling requirements for dry milk products;

§ 2VAC5-490-50 was amended to:

1. Allow the processes of filtration or bacto-fugation to be used on grade A milk and milk products;
2. Raise the Somatic Cell Standard for goat’s milk to 1,500,000 cells per milliliter from 1,000,000 cells per milliliter;
3. Include quality standards for nonfat dry milk;
4. Reference the 2009 version of the PMO;

5. Include temperature storage requirements for whey and whey products being held for condensing or drying;
6. Include an exemption for immediate cooling of milk and milk products to 45°F when they are intended to be dried or condensed immediately after processing or for certain cultured dairy products based on specific pH values for each product;
7. Include extended cooling times for cultured sour cream and acidified sour cream with a pH of 4.70 or 4.60 respectively;
8. Include specific cooling times for yogurt products and cultured butter milk;
9. Require indicating thermometers in each room where milk products are stored;
10. Provide access to certain plant records pertaining to cleaning and product storage temperatures;
11. Eliminate the allowance for cottage cheese to be packaged outside the plant where it was pasteurized and processed;
12. Include packing, storage and transport requirements for dry milk products; and
13. Clarify the minimum facilities requirements that each milk plant must provide.

§ 2 VAC5-490-73 was amended to clarify the intent to regulate only those milk products offered for sale for human consumption;

§ 2 VAC5-490-105 was amended to allow the agency the discretion to extend agreements beyond two years for purposes of studying new or test equipment and facilities installed on Virginia dairy farms;

§ 2 VAC5-490-131 was amended to reference the 2009 version of the Pasteurized Milk Ordinance; and

§ 2VAC5-490-140 was amended to reference the 2009 version of the Pasteurized Milk Ordinance.

## Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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The Board of Agriculture and Consumer Services adopted proposed amendments to 2 VAC 5-490, Regulations Governing Grade "A" Milk on May 20, 2009.